53D CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1875.

AMENDMENT OF MINING LAWS.

FEBRUARY 20, 1895.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. WEADOCK, from the Committee on Mines and Mining, submitted the following

REPORT:

[To accompany S. 1515.]

The Committee on Mines and Mining, to whom was referred the bill (S. 1515) entitled "A bill to amend chapter 6 of title 32 of the Revised Statutes, relating to mineral lands and mining resources," report it back to the House with the recommendation that it pass.

The letter of Hon. Hoke Smith, Secretary of the Interior, accompanying the report of Hon. S. W. Lamoreux, Commissioner of the General Land Office, is submitted herewith.

The report of the Commissioner shows the changes that will be made by the bill in the existing law.

APPENDIX.

DEPARTMENT OF THE INTERIOR,
Washington, February 15, 1895.

SIR: I transmit herewith report of the Commissioner of the General Land Office on Senate bill 1515, "To amend chapter 6 of title 32 of the Revised Statutes, relating to mineral lands and mining resources."

I call the attention of the committee to the suggestions of the Commissioner, as contained in his said report. I have no further suggestion to make, except to recommend that the word "petroleum," in the fifteenth line on page 8, be stricken from the bill.

There is now pending before the Senate a bill providing for the disposal of all mineral substances other than gold, silver, cinnabar, lead, tin, copper, and other valuable deposits of like character, which will include petroleum, and which, in my judgment, provides the best means for disposing of lands containing mineral substances of such a character.

Very respectfully,

HOKE SMITH, *Secretary.*

Hon. THOMAS E. WEADOCK,
Chairman of Committee on Mines and Mining, House of Representatives.

[In re Senate bill No. 1515, Fifty-third Congress, second session. A bill to amend chapter 6 of title 32 of the Revised Statutes, relating to mineral lands and mining resources, introduced by Mr. Stewart.]

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., January 25, 1895.

SIR: On the 14th day of January, 1895, you referred the above-described Senate bill to this office for a report thereon, and I have the honor to submit the following report:

This bill has for its object the amendment of sections 2324, 2325, 2334, 2335, 2337, and 2338 of the Revised Statutes, and of section 16 of the act of March 3, 1891 (26 Stat., 1095).

For convenience of consideration these sections, amended as proposed, are given below, the words omitted from the existing sections being shown in brackets and those added or inserted being in italics. Each section will be considered in turn.

SEC. 2324. The miners of each mining district may make regulations not in conflict with the laws of the United States or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground *by posts or monuments*, so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located [by reference to some natural object or permanent monument] as will identify the claim. On each lode claim located after the tenth day of May, eighteen hundred and seventy-two, and until [a patent] *payment of the purchase money and a certificate of entry* has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all *lode* claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made [by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter] *during each year* for each one hundred feet in length along the vein until [a patent] *payment of the purchase money and a certificate of entry* has been issued therefor; *and for each twenty acres of placer claims, and for each subdivision thereof less than twenty acres, fifty dollars' worth of labor shall be performed or improvements made during each year until payment of the purchase money and a certificate of entry shall be issued therefor* [but where such claims are held in common, such expenditure may be made upon any one claim.] *But where several adjoining lode claims, not exceeding five, are owned or held by the same person, association, or corporation, and the sum of five hundred dollars or more is expended in any one year in good faith for the development of all the claims so owned or held, not exceeding five, there shall be no requirement for separate labor or improvements to be performed or made on the several claims so owned or held during such year. The year within which the annual labor or improvements required to be performed or made by this section shall commence at twelve o'clock meridian on the first day of October of each year: Provided, That upon claims located previous to the first day of March in any year the annual labor or improvements shall be performed or made on such claim for that year prior to twelve o'clock meridian on the first day of October next succeeding; and upon claims located after the last day of February and prior to twelve o'clock meridian of the first day of October in any year, the annual labor or improvements required shall be perfomed or made within one year from twelve o'clock meridian of the first day of the succeeding October: And provided further, That only one-half of the annual labor or improvements required by this act shall be necessary to be performed or made prior to twelve o'clock meridian on the first day of October, in the year eighteen hundred and ninety-five, but after the first day of October, in the year eighteen hundred and ninety-five, the full amount of labor or improvements required by this act shall be performed or made upon such claims as in all other cases during each year prior to twelve o'clock meridian of the first day of October. In case the first day of October falls on Sunday or any holiday, the following secular day shall be construed as the first day of October within the meaning of this act. When the labor required by this act shall have been performed or the improvements made, an affidavit may be filed within thirty days after the time limited for performing such labor or making such improvements, with the recorder of deeds of the county in which the claim or mine is situated, particularly describing the labor performed and improvements made, and the value thereof, which affidavit shall be prima facie evidence of the facts therein stated.* [And upon a failure to comply with these conditions the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made: *Provided*, That the original locators, their heirs, or assigns, or legal representatives, have not resumed work upon the claim after failure and before such location.] *And upon a failure to comply with the conditions of this act in the performance of labor or making of improvements, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had been made: Provided, That the original locators, their heirs, assigns, or legal representatives, do not resume work upon the claim after such failure and before such relocation, and continue the same with reasonable diligence until the required amount of labor shall have been performed or improvements made; but no relocation of a claim by a person who has already located such claim and failed to comply with the conditions of this act in performing work or making improvements shall be valid prior to such resumption and continuance of work upon such claim.* Upon the failure of any one of several coowners to contribute his proportion of the expenditures required hereby the coowners who have performed the labor or made the [improvements] *improvement* may, at the expiration of the year, give such delinquent coowner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and

if at the expiration of ninety days after such notice in writing or by publication such delinquent [should] *shall* fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his coowners who have made the required expenditures. *A copy of such notice, together with an affidavit showing personal service or publication, as the case may be, of such notice, when filed and recorded with the recorder of deeds of the county in which such mining claim is situated, shall be evidence of the acquisition of title of such coowners.* Where a person or company has or may run a tunnel for the purpose *and with the intent in good faith* of developing a lode or lodes owned by said person or company, the money so expended in *running* said tunnel shall be taken and considered as expended on said lode or lodes: *Provided further, That said lode claim or claims shall be distinctly marked on the surface, as provided in this act.*"

It is suggested that a comma be placed after the word "recording" on line 9, page 1, of the bill as reported.

On page 2, lines 16 to 31, it is provided that the requirement as to performance of what is commonly termed "annual assessment work" shall cease upon the making of mineral entry, instead, as at present is the law, upon issuance of patent. With regard to this amendment I have only to state that the section as amended upon this point would be declaratory of the existing law, for it has been repeatedly decided that for the purpose of this section the issuance of certificate of entry has the effect of a patent, inasmuch as it operates to vest in the entry man the equitable title to the land entered, the patent when issued, relating back to date of entry. (See Witherspoon *v.* Duncan, 4 Wall., 210; Smelting Co., *v.* Kemp, 104 U. S., 647; Deffeback *v.* Hawk, 115 U. S., 392; Cornelius *v.* Kessell, 128 U. S., 456.)

The amendment would accordingly seem a proper one.

On said page 2 it is proposed to distinguish between lode claims and placer claims in the matter of performance of labor or making of improvements each year. It is the evident intent of the author of the bill to prevent the holding of large tracts of land under the placer mining laws for speculative purposes and at a cost of not more than $100 per year. This object I regard as highly commendable, but it is thought that at least $100 should be annually expended in labor or improvements upon *every* mining claim, and it is suggested that the word "lode," in lines 16 and 21 on page 2, and the provision as to placer claims, lines 26 to 31, be eliminated from the bill, and that after the word "therefor," on line 26, the following be inserted: "*Provided*, That for every twenty acres, or fractional part thereof in excess of forty acres, embraced in any placer claim, an additional fifty dollars' worth of labor shall be performed or improvements made during each year until payment of the purchase money and issuance of certificate of entry."

If, however, this suggestion be not followed, it is suggested that the word "subdivision," on line 27, page 2, be stricken out and the word "part" substituted, as the word subdivision has a technical meaning in the land laws not given to it in this bill.

The provision, lines 31 to 38, page 2, that where annual labor is performed or improvements are made upon a group of claims not more than five claims shall be embraced in such group, is deemed a very desirable one.

The object of causing the year within which annual labor is to be performed or improvements made to commence on the 1st day of October is not apparent, while, on the other hand, it would seem more convenient to use the calendar year in all cases where it is possible so to do.

If said provision be retained, however, it is suggested that the sentence commencing with the last word on line 59, page 3, be changed to read substantially as follows, to wit: "In case the 1st day of October falls on Sunday or any legal holiday, the following day not Sunday or a legal holiday shall be construed as the 1st day of October within the meaning of this act." The reason for this suggested change is that by the terms of said provision as it stands if the 1st day of October should fall on Sunday, and the Monday following should be a legal holiday, such legal holiday would have to be taken as being the 1st day of October.

The bill provides—lines 62 to 70, pages 3 and 4—for the recording of affidavits showing compliance with the law in the matter of annual labor or improvements. The record of such affidavits might be of use in cases either before the land department or the courts, where compliance with this section of the law is in issue.

The proviso on lines 75 to 84, page 4, is calculated to remedy a serious defect in the existing law, but for greater effectiveness it is recommended that the second clause of said proviso be amended to read as follows: But no relocation of a claim by a person, or by those claiming under a person, who has already located such claim and failed to comply with the conditions of this section, made prior to such resumption and such continuance of work upon such claim, shall be valid.

The word "improvement" on line 87, page 4, should be "improvements."

The provision, lines 96 to 100, page 5, for recording notices of forfeiture with incidental affidavits is declaratory of the practice of this office, but it is suggested that

the following be added, to wit: "*Provided*, That if any such mining claim shall not be situate in any organized county, the filing and recording of such notice and affidavit in the office of the recorder of deeds of the organized county lying nearest the claim shall have the same effect as the filing and recording above provided for: *Provided further*, That if such mining claim shall be situate in the district of Alaska, such copy of notice and such affidavit may be filed and recorded in the office of the recorder of the mining district in which such claim may be situate, and such filing and recording shall have the same effect as the filing and recording hereinbefore provided for."

The proviso on lines 105 to 107, page 5, can have no particular effect, being simply reiterative of the law as found in the first part of this section. If the proviso is retained the word "further" introducing it should be stricken out as said proviso is the only one to the clause to which it is applied.

"SEC. 2325. A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of this chapter, may file in the proper [land-office] *land office* an application for patent, under oath, showing such compliance, together with a plat and [field-notes] *field notes* of the claim or claims in common, made by or under the direction of the United States surveyor general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least [two persons] *one person* that such *plat and* notice [has] *have* been duly posted, and shall *also* file a copy of the notice in such [land-office] *land office* and shall thereupon be entitled to a patent for the land in the manner following: The register of the [land-office] *land office*, upon the filing of such application, plat, [field-notes] *field notes*, notices, and affidavits, shall publish a notice that such application has been made for the period of sixty days in a newspaper, to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter within the sixty days of publication, shall file with the register a certificate of the United States surveyor-general that five hundred dollars, worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim and furnish an accurate description to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and receiver of the proper [land office] *land office* at the expiration of the sixty [days of] days' publication it shall be assumed that the applicant is entitled to a patent, *and that no adverse claim exists, and* upon the payment to the proper officer of five dollars per acre [and that no adverse claim exists] *he shall receive a certificate of entry;* and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter. *But no more than three thousand feet in length along the vein on claims located prior to the tenth day of May, eighteen hundred and seventy-two, and not more than the extent of fifteen hundred feet in length by six hundred feet in width located after said date shall be included in the same application for a patent, and not more than forty acres of placer or petroleum ground shall be included in the same application for a patent: Provided, That when fractional claims are located or sought to be patented between other existing claims the end lines may be made to conform to the lines of such adjoining claims.*"

It is considered that the present law requiring the affidavits of two witnesses to the posting of plat and notice upon the claim should not be changed as proposed, so as to require the affidavit of but one person to such posting, as it surely entails no hardship to require that such posting be witnessed by two persons, while a corroborated affidavit is entitled to greater weight than that of one person.

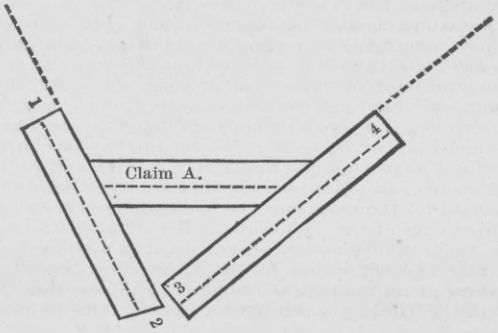
The restriction as to the amount of land which may be embraced in a mineral application—lines 47 to 55, page 7—I cannot too strongly recommend, as I am of the opinion that the existing law, which permits an unlimited quantity of mineral land to be embraced in one application and entry, is very defective and facilitates the perpetration of many frauds upon the Government.

It is suggested, however, that the words "or petroleum," on line 54, page 7, be stricken out, as liable to cause needless confusion.

Petroleum ground is, in fact, placer ground, and can be taken only under the laws governing the disposition of placer claims. Hence, any attempt to distinguish between placer ground and petroleum ground would be devoid of good result.

The proviso as to end lines, on lines 55 to 58 on pages 7 and 8, I cannot recommend. Section 2322, Revised Statutes, provides that the locators of lode-mining claims "shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward, as above described, through the end lines of their locations," etc. Section 2320 provides that "the end lines of each claim shall be parallel to each other."

To restrict the last quoted requirement of the law would give, in some cases, an unlimited monopoly of valuable mineral deposits, under section 2322, as may be easily seen from the diagram.



Suppose the lode in claim A to dip to the north. By reason of the divergence of the end lines of the claim, the claimant, under section 2322, could follow the vein on its dip to any distance between the lines one and two and three and four, indefinitely produced northward, thus, in effect, obtaining far in excess of 1,500 feet in length along the lode. In view of all which it is submitted that said proviso should be eliminated from the bill.

It is proposed to amend section 2334 by adding thereto the following, to wit: "And the surveyors appointed under the provisions of this section shall have power to administer oaths to their assistants."

Inasmuch as claims to be surveyed are often situate far from communities where reside officers by whom oaths are usually administered, I am of the opinion that the amendment is a desirable one.

"SEC. 2335. All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths [within the land district where the claims may be situated] *in any State or Territory of the United States or in the District of Columbia having an official seal*, and all testimony and proofs may be taken before any such officer, and when duly certified by the officer taking the same, *attested by his seal of office*, shall have the same force and effect as if taken before the register and receiver of the [land-office] *land office*. In cases of contest as to the mineral or agricultural character of land, the testimony and proof may be taken [as herein provided, on personal notice of at least ten days to the opposing party, or if such party can not be found, then by publication of at least once a week for thirty days in a newspaper to be designated by the register of the land office as published nearest to the location of such land; and the register shall require proof that such notice has been given] *under such regulations and notice as the Commissioner of the General Land Office may provide: Provided, That the presence of rock in place bearing gold, silver, cinnabar, petroleum, or other valuable mineral shall be regarded as prima facie evidence that the land containing the same is mineral in character: And provided further, That in investigating the character of land with a view to ascertain whether it is more valuable for mineral than agriculture, evidence may be taken of the mineral discovered or developed adjacent to such land.*"

Under the existing law, the affidavits required by chapter 6 of title 32 must be made within the land district in which the claim involved is situate, except as provided by the act of April 26, 1882 (22 Stats., 49), which allows affidavits of citizenship or in support of adverse claims to be made before any clerk of a court of record or any notary public, in any State or Territory in which the affiant shall be. This

requirement seems to be without any particular object, and I am of the opinion that it should be removed. As to the proposed amendment, however, it is suggested that United States circuit court commissioners and justices of the peace, though authorized to administer oaths, have no seal, in view of which fact I would recommend that the provision as to affidavits be changed so as to read substantially as follows: "All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths, in any State or Territory or the District of Columbia, whose official character is properly shown."

No objection is known to that portion of this section—lines 10 to 14, page 8—which gives to the Commissioner of this office power to make regulations concerning the taking of testimony in contests to determine the mineral or nonmineral character of land.

As to the proviso on lines 14 to 17, page 8, it may be stated that the question of character of land is obviously one of fact, and it is not considered advisable that the Land Department should be restricted or hampered in its adjudications upon the subject by such a rule as is proposed. It should be left free, like any other tribunal, to decide the issue upon *all* the evidence before it.

No objection is known to the proviso found on lines 17 to 21, pages 8 and 9.

"SEC. 2337. Where [non-mineral] nonmineral land not [contiguous to the vein or lode] *included in a lode claim* is used or occupied, *or is intended in good faith to be used or occupied* by the proprietor of such vein or lode *claim* for mining or milling purposes, such [non-adjacent] *non-mineral* surface ground may by embraced and included in an application for a patent for such vein or lode *claim*, and the same may be patented therewith, *or separately*, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes *claims;* but no location hereafter made of such [non-adjacent] *nonmineral* land shall exceed [five] *ten* acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode *claim*. The owner of a [quartz-mill] *quartz mill* or [reduction works] *reduction works*, not owning a mine in connection therewith, may also receive a patent for his [mill-site] *mill site* as provided in this section."

There are only three material changes proposed in this section, as follows:

I. The insertion of the words "or is intended in good faith to be used or occupied," on lines 4 and 5, page 9.

II. The insertion of the words "or separately," on line 9, page 9.

III. The substitution of the word "ten" for "five," line 12, page 9.

As to the first: Section 2337 is very liberally construed by this office and by the Department, and it would certainly seem that, where land is to be patented for a specific purpose, it is but reasonable to require claimant to show that the land sought is, in fact, used or occupied for the purpose intended.

It would be inadvisable, not to say highly imprudent, to patent land to a person upon his affidavit that he *intended* to use or occupy the same for mining or milling purposes at some uncertain time in the future. I am strongly of the opinion that the proposed measure would open the way to the perpetration of frauds and place a premium upon perjury which would be impossible of proof and punishment.

As to the second amendment. To allow, as a general rule, application to be made for a lode and mill site and then to allow entry of each, separately, would only lead to confusion in the records of the Land Department without apparently serving any good end.

No objection is known to the substitution of the word "ten" for the word "five" on line 12 of page 9.

Section 2338, as it now stands, reads as follows:

"As a condition of sale, in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent."

It is proposed to amend the same to read as follows:

"As a condition of sale each patent shall reserve the right of way through or over any mining claims for roads, ditches, canals, cuts, tunnels, and other easements, for the purpose of working mines, and for agricultural purposes: *Provided*, That any damages occasioned thereby shall be assessed and paid in the manner provided by the laws of the State or Territory in which such mine is situated for assessments and payments for land taken for public use under the right of eminent domain. And the rights and easements heretofore reserved under the provisions of this section (2338 of the Revised Statutes) in patents heretofore issued shall be regulated and made available as herein prescribed."

The meaning and purpose of the last above-quoted clause is not plain, but it would appear to give to the amendment of said section a retroactive or ex post facto effect, and it is therefore recommended that said clause be stricken out.

It is proposed to amend section 16 of the act approved March 3, 1891 (26 Stat., 1095), to read as follows:

"That [town-site] entries may be made by incorporated towns and cities on the

mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold, silver, cinnabar, copper, or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof, and when entry has been made or patent issued for such [town sites] *town sites* to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and [the] surface ground [appertaining thereto] *recognized by the local laws and statutes of the United States not held or possessed adversely to the claimant for such mineral vein by other than the said city or town, or when it shall appear that the claimant otherwise entitled to such mineral vein has acquired title to such surface ground from said city or town: Provided,* That no entry shall be made by such mineral-vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant."

Regarding said section 16 of the act of March 3, 1891, I have to state that, in my judgment, said section should be repealed for the following reason: Suppose a town site to have been patented under said section. At the date of the town-site entry A is in possession of a valid mining claim situate within the town site. Years after the issuance of the town-site patent he applies for a patent for his mining claim. Under the provisions of said section, should he furnish prima facie proof of the facts above stated, this office would be compelled to issue a patent for said claim, notwithstanding the fact that said land was covered by the outstanding town-site patent. The issuance of said second patent would result in litigation between the two patentees. In my opinion, the mineral claimant should be *first* sent into court, where he may obtain a decree vacating the town-site patent as to conflict with said mining claim, whereupon the Land Department would be reinvested with jurisdiction over the land and might rightfully patent the same to the mineral claimant.

In accordance with these views I would respectfully recommend that the matter be left as provided in section 2386 of the Revised Statutes, which reads as follows: "Where mineral veins are possessed, which possession is recognized by local authority, and to the extent so possessed and recognized, the title to town lots to be acquired shall be subject to such recognized possession and the necessary use thereof; but nothing contained in this section shall be so construed as to recognize any color of title in possessors for mining purposes as against the United States."

In view of the foregoing it is recommended that the bill, changed as suggested, be passed.

Said copy of Senate bill 1515, with copy of House bill 5859 and letter of transmittal from the chairman of House Committee on Mines and Mining, are herewith returned.

Very respectfully,

S. W. LAMOREUX, *Commissioner.*

The SECRETARY OF THE INTERIOR.

O